NOTIFICATION

Law Department

No. LAW 20 LCA 67 *Bangalore, dated* 17*th June* 1967.

Ordered that the Government (Liability in Tort) Bill, 1967 (Bill No. 43 of 1967), which has been published in the *Gazette of India*, Extraordinary, Part II, Section 2, dated the 22nd May 1967, be published in the *Mysore Gazette*, for general information.

By Order and in the name of the Governor of Mysore,

B. Ramachandra Rao,
Under Secretary to Government,
Law Department.

LOK SABHA

The following Bill was introduced in Lok Sabha on the 22nd May, 1967 :—

Bill No. 43 of 1967

A bill to define and amend the law with respect to the liability of the Government in tort and to provide for certain matters connected therewith.

Be it enacted by Parliament in the Eighteenth Year of the Republic of India as follows :—

1. *Short title, extent and commencement.*—(1) This Act may be called the Government (Liability in Tort) Act 1967.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. *Definitions*.—In this Act, unless the context otherwise requires,—

(*a*) "agent", in relation to the Government, means a person (other than an employee of the Government) who being employed to do any act for the Government is, in doing the act, under the order or control of the Government;

(*b*) "employee of the Government" means any person who—

(*i*) is a member of a defence serivce or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union; or

(*ii*) is a member of a civil service of a State or holds any civil post under a State;

(*c*) "Government", in relation to any liability imposed under this Act, means—

(*i*) where a tort is committed by an employee of the Government while acting in connection with the affairs of the Union, or by an agent or independent contractor employed by the Central Government, the Central Government;

(*ii*) where a tort is committed by an employee of the Government while acting in connection with the affairs of a State, or by an agent or independent contractor employed by a State Government, the State Government;

(*d*) "independent contractor", in relation to the Government, means a person who contracts to do an act for the Government, but who in doing the act is not under the order or control of the Government.

3. *Liability of Government in tort.*—Subject to the provisions of this Act the Government shall be liable in respect of any tort—

(a) *committed by an employee of the Government or an agent employed by the Government,*—:

(i) *while acting in the course of his employment ; or*

(ii) *while acting beyond the course of his employment if the act constituting the tort was done by the employee or agent on behalf of the Government and is ratified by the Government ;*

(b) *committed by an independent contractor* employed by the Government or any of his servants or *workmen in doing the act contracted to be done for the Government in any of the following cases (and in no others), namely :—*

(i) *where the Government assumes control of the act contracted to be done by the independent contractor ;*

(ii) *where the Government has authorised or ratified the act of the independent contractor alleged to constitute the tort ;*

(iii) *where the act contracted to be done although lawful is of such a nature that unless reasonable care is taken, it is likely in the ordinary course of events to cause personal injury or damage to property in the doing thereof and such care has not been taken :*

Provided that the Government shall not be liable under this sub-clause if there is an express stipulation in the contract between the Government and the independent contractor that—

(a) *reasonable care in the doing of the act shall be taken by the independent contractor and not by the Government, and*

(b) *the independent contractor shall, and the Government shall not, be liable for any personal injury or any damage to property caused in the doing of the act by the failure on the part of the independent contractor to take such care;*

(iv) *where the Government is under a legal obligation to do the act itself;*

(v) *where any law for the time being in force imposes upon the Government an absolute duty to ensure the safety of persons or property in the doing of the act contracted to be done and there has been a failure to comply with that duty.*

Liability of Government in tort as owner or occupier of immovable property.

4. *Where the Government is the owner of any immovable property, or is in possession or occupation of, or exercises control over, any immovable property, the Government shall be liable in respect of any breach of duty attaching by law to the ownership, possession, occupation or control of such property in the same manner and to the same extent as a private person of full age and capacity:*

Provided that where any such property vests in the Government by virtue of any rule of law which operates independently of the acts or intentions of the Government, the Government shall not, by virtue of this section, be subject to any liability in tort by reason only of the property being so vested, but the provisions of this section shall be without prejudice to the liability of the Government thereunder in respect of any period after the Government or any person acting for the Government has, in fact, taken possession or control of any such property, or entered into occupation thereof.

LIABILITY OF GOVERNMENT IN TORT IN RESPECT OF ESCAPE OF DANGEROUS THINGS.

5. The Government shall be liable in respect of any personal injury or any damage to property caused by any dangerous thing in the possession of the Government or over which the Government exercises control in the same manner and to the same extent as a private person of full age and capacity would be liable in similar circumstances if he were in possession of, or exercised control over, such thing.

LIABILITY OF GOVERNMENT IN RESPECT OF BREACH OF DUTIES TO ITS EMPLOYEES.

6. The Government shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject in respect of any breach of those duties which a person owes to his servants or agents under any law for the time being in force by reason of being their employer :

Provided that in awarding compensation to any employee of the Government or any agent employed by the

Government in respect of any personal injury or any damage to property caused by the breach of any such duties, the court shall take into account the amount, if any, paid or required to be paid by the Government, whether by way of disablement benefit, compensation or otherwise, to such employee or agent under any other law for the time being in force.

7. *Statutory limits as to the amount of liability to apply to claims against Government also.*—Any enactment which negatives or limits the amount of liability of an employee of the Government or an agent employed by the Government in respect of any tort committed by such employee or agent shall, in the case of any proceedings against the Government under this Act in respect of such tort, apply in relation to the Government as it would have applied to such employee or agent if the proceedings against the Government had been proceedings against that employee or agent.

8. *Defences open to Government.*—In any proceedings against the Government under this Act, the Government shall be entitled to raise by way of defence the same pleas which a private person would be entitled under law to raise if a similar suit had been instituted against such person.

9. *Indemnity and contribution.*—Where the Government is subject to any liability in tort by virtue of this Act, any law relating to indemnity and contribution shall be enforceable by or against the Government in respect of the liability to which it is so subject as if the Government were a private person of full age and capacity.

10. *Special provisions relating to armed forces of the Union and police forces.*—(1) Any act done by a member of the armed forces of the Union while on duty as such or by a member of a police force while on duty as such shall not subject either him or the Government to liability in

tort for causing the death of another person or for causing personal injury to another person, in so far as the death or personal injury is due to anything suffered by that other person while he is a member of the armed forces of the Union or, as the case may be, a member of the police force if—

(a) at the time the thing is suffered by that other person he either is on duty as a member of the armed forces of the Union or as a member of the police force or, though not on duty, is in any land, premises, ship, aircraft or vehicle for the time being used for the purposes of the armed forces of the Union or, as the case may be, for the purposes of the police force ; and

(*b*) the Government certifies that his suffering that thing has been or will be treated as attributable to service for the purposes of entitlement to any award under any law or scheme relating to the death or disablement of members of the force of which he is a member :

Provided that this sub-section shall not exempt a member of the armed forces of the Union or a member of a police force from liability in tort in any case in which the court is satisfied that the act was not connected with the execution of his duties as a member of those forces or that force.

(2) No proceedings in tort shall lie against the Government for death or personal injury due to anything suffered by a member of the armed forces of the Union or a member of a police force if—

(*a*) that thing is suffered by him in consequence of the nature or condition of any such land, premises, ship, aircraft or vehicle as aforesaid or in consequence of the nature or condition of any equipment or supplies used for the purposes of those forces or that force ; and

(*b*) the Government certifies as mentioned in the preceding sub-section;

nor shall any act of an employee of the Government subject him to liability in tort for death or personal injury in so far as the death or personal injury is due to anything suffered by a member of the armed forces of the Union or by a member of a police force, being a thing as to which the conditions aforesaid are satisfied.

(3) The Government or an officer authorised by the Government in this behalf, if satisfied that it is the fact—

(*a*) that a person was or was not on any particular occasion on duty as a member of the armed forces of the Union or as a member of a police force; or

(*b*) that at any particular time any land, premises, ship, aircraft, vehicle, equipment or supplies was or was not or were or were not used for the purposes of those forces or that force,

may issue a certificate certifying that to be the fact; and be conclusive as to the fact which is certified.

(4) In this section, the word "Government" means—

(*a*) in relation to a member of the armed forces of the Union or of a police force maintained by the Central Government, the Central Government;

(*b*) in relation to a police force maintained by a State Government, the State Government.

11. *Savings.*—Nothing contained in this Act shall render the Government liable in respect of—

(*a*) any act of State;

(*b*) any act done by the Government in the discharge of its functions in relation to any of the matters enumerated in entries 10, 11, 12, 13, 14, 15 and 16 of List I in the Seventh Schedule to the Constitution ;

(*c*) any act done by the President of India in the exercise and performance of the powers and duties of his office in relation to the summoning and prorogation of the Houses of Parliament, the dissolution of the House of the People, the assent to, or the withholding of assent from, any Bill, the return of any Bill to the Houses for reconsideration of the Bill or any specified provisions thereof or the issue of any Proclamation under the Constitution ;

(*d*) any act done by the Governor of a State in the exercise and performance of the powers and duties of his office in relation to the summoning and prorogation of the House or Houses of the Legislature of the State, the dissolution of the Legislative Assembly, the assent to, or the withholding of assent from, any Bill, the reservation of any Bill for the consideration of the President or the return of any Bill to the House or Houses for reconsideration of the Bill or any specified provision thereof ;

(*e*) any act done under a Proclamation issued under the Constitution ;

(*f*) any act authorised by or under the Trading with the Enemy (Continuance & Emergency Provisions) Act, 1947 (16 of 1947) ;

(*g*) any act done in the exercise of the powers vested in the Union for the purpose of training, or maintaining the efficiency of, the armed forces ;

(*h*) any act done by a member of the armed forces of the Union while on active service.

(*i*) any act done by—

(*i*) a member of a police force ; or

(*ii*) a public servant whose duty it is to preserve peace and order in any area or place or who is engaged on guard, sentry, patrol, watch and ward, or other similar duty in relation to any area or place,

for the prevention or suppression of a breach of the peace, or a disturbance of the public tranquility, or a riot, or an affray, or for the prevention of any offences against public property ;

(*j*) any act done or ordered to be done by a judge, magistrate, or any other person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him ;

(*k*) any act in connection with the execution of lawful warrants or orders of a judge, magistrate, or any other person discharging or purporting to discharge any responsibilities of a judicial nature vested in him, done by any person bound to execute the warrants or orders ;

(*l*) any act for which immunity is granted under the Indian Telegraph Act, 1885 (13 of 1885), the Indian Post Office Act, 1898 (6 of 1898), or under any other enactment for the time being in force ;

(*m*) any act in respect of which a remedy is provided under the Indian Railways Act 1890 (9 of 1890), or under any other enactment for the tine being in force ;

(*n*) any personal injury or any damage to property caused by an act wich by its nature is likely in the ordinary course of events to cause such injury or damage, if the doing of the act is authorised by any enactment for the time being in force :

(*o*) any claim arising out of defamation, malicious prosecution or malicious arrest;

(*p*) any claim arising out of the operation of any quarantine law;

(*q*) any claim arising in a foreign country.

12. *Pending proceedings.*—The provisions of this Act shall not affect any proceedings by or against the Government which have been instituted before the commencement of this Act, and such proceedings shall be disposed of as if this Act has not been passed.

13. *Amendment of Act* 13 *of* 1855.—In the Fatal Accident Act, 1885, in section 4, for the words 'the word "person" shall apply to bodies politic and corporate', the following, shall be substituted, namely:—

'the word "person" shall apply to bodies politic and corporate and the Government'.

STATEMENT OF OBJECTS AND REASONS

The law relating to the liability of the Government for torts or civil wrongs is in a state of uncertainty. This uncertainty has been occasioned by conflicting judicial decisions. In view of this uncertainty, the matter was referred on the initiative of the late President of India, Dr. Rajendra Prasad, to the Law Commission for consideration and report. The Lam Commission examined the matter in detail and after having made a general survey of the law with respect to liability of the Government in tort in various countries such as the United Kingdom, United States of America, Canada, Australia, France, etc., recommended that legislation should be undertaken in India for

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defining the liability of the Government in tort and formulated for this purpose certain specific proposals based mainly on the U.K. Crown Proceedings Act, 1947. While these proposals were under the active consideration of the Government, the question of the extent of liability of the Government in tort came up for consideration before the Supreme Court in State of Rajasthan *v.* Mst. Vidyawathi—1962, Supp. 2 S.C.R. 987. In that case it was held by the Supreme Court that in India, ever since the time of the East India Company, the sovereign has been held liable to be sued in tort or in contract, and that the Common Law immunity never operated in India. But, in a more recent case—Ralia Ram *v.* the State of Uttar Pradesh, 1965, 1 S.C.A. 809, the Supreme Court has held that the distinction between sovereign and non-sovereign functions of the Government even now obtains in India and that, therefore, the State is liable for tortious acts committed by its employees only if such acts are committed in the discharge of functions which are not sovereign. The Court, however, was not satisfied with this state of law and urged that the matter should be set right without delay by legislation, as has been done in the United Kingdom by the Crown Proceedings Act, 1947. This Bill which seeks to implement, subject to some modifications, the recommendations of the Law Commission in its Report on the liability of the State in tort, is intended to give effect to the suggestion of the Supreme Court. It is identical with the Government (Liability) in Tort Bill, 1965 which lapsed on the dissolution of the Third Lok Sabha.

2. The recommendations of the Law Commission, as given effect to in the Bill, may be categorised as follows :—

(*i*) In the first place, there is the liability of the Government to third parties for torts committed by its employees and agents. Here, the Government, like any private individual, should be vicariously liable to third parties for torts committed by its employees and agents in the course of their employment or for torts committed by its employees and agents on behalf of the Government and

subsequently ratified by the Government. This recommendation has been embodied in clause 3(*a*) of the Bill.

(*ii*) In the second place, there is the liability of the Government to third parties for torts committed by an independent contractor employed by the Government and his servants and workers. Here, the Government, like any private individual, should be liable to third parties only in cases specified in clause 3(*b*) of the Bill.

(iii) In the third place, there are Common Law duties attaching to ownership, occupation, possession or control of property. Here also, the Government, like any private individual, should have certain duties when it is the owner of any immovable property or in possession or occupation of, or exercises control over, any immovable property. Clause 4 of the Bill gives effect to this recommendation.

(iv) In the fourth place, there is the liability of the Government in tort in respect of escape of dangerous things. Here also, the Government, like any private individual, should be liable in respect of any personal injury or any damage to property caused by any dangerous thing in the possession of the Government or over which the Government exercises control. Clause 5 of the Bill gives effect to this recommendation.

(*v*) In the fifth place, there is the liability of the Government towards its own employees and agents. Here also, the Government, like any private individual, should be liable to its own employees and agents for any injury caused by the failure of the Government to take the requisite care. Clause 6 of the Bill gives effect to this recommendation.

(*vi*) In the sixth place, the other recommendations of the Law Commission which are of an incidental, ancillary or minor nature have been incorporated in clauses 7, 8 and 9 of the Bill.

(*vii*) Clause 10 of the Bill makes certain special provisions as to armed forces of the Union and police forces and clause 11 provides for a number of savings and exceptions.

3. The Notes on clauses explain in greater detail the various provisions of the Bill and also indicate the deviations made from the recommendations of the Law Commission and the reasons for the deviations. The Notes also make reference to relevant provisions of the U.K. Crown Proceedings Act and important cases on the subject.

NEW DELHI,
The 15th May 1967.

P. GOVINDA MENON.

Notes on clauses

Clause 2.—This clause contains the definitions of important words and expressions used in the Bill some of which are based on the definitions suggested in paragraph 66 VI of the Report of the Law Commission on Liability of the State in Tort (hereinafter referred to as the "Report").

The Law Commission has suggested that "agent" shall have the same meaning as in the Indian Contract Act, 1872. But this suggestion has not been accepted as "agent" as defined in the Indian Contract Act is wide enough to include an "Independent Contractor" also. In the law of contract an "independant contractor" may be regarded as an "agent" but in the law of tort, there is an essential difference between an "agent" and an "independent contractor", but there is no such difference between an "agent" and a "servant". It is thus stated in Clerk and Lindsell on Torts (11th Ed. at page 116) while drawing a distinction between "servant" and "contractor"—

"Of the former class (servants) those whose employment is more or less continuous are usually styled servants

while those whose employment is intermittent or confined to a particular occasion are usually called by the generic name of agents. Between servants, however, and other agents over whom the employer reserves control, there is no distinction in point of law ; the employer is liable for the torts of the one to the same extent and subject to the same conditions as he is liable for the torts of the other. For the sake of brevity, therefore, it may be convenient to speak of all those classes of agents over whom the employer reserves control as servants in contra-distinction to contractors over whom such control is not reserved."

[See also *ibid*, p. 135, Salmond on the Law of Torts (14th Ed., pp. 648 *et seq.*) ; Pollock's Law of Torts (15th Ed., pp. 62 and 63); Fleming. The Law of Torts (2nd Ed., pp. 325 et seq.); Street, Law or Torts (1963). Chap XXVII ; Performing Right Society, Ltd. *v.* Mitchell (1924), 1 K.B. 762. In this case, the distinction between a servant and an independent contractor has been clearly brought out with reference to general principles laid down by well-known authorities ; see also the case of Honeywill and Stein, Ltd. *v.* Larkin Brothers, Ltd. (1934) 1 K.B. 191 (C.A.) at 196, 197].

The definition of " employee of the Government " is based on article 310 of the Constitution.

The definition of " independent contractor " has explained above.

The exact definition of " tort " is well nigh impossible as pointed out by the Law Commission, and therefore has not been attempted.

Clause 3.—Sub-clause (*a*) gives effect to the receommendation in paragraph 66. I(i) of the Report and is modelled on section 2(1) (*a*) of the U.K. Crown Proceedings Act, 1947 (hereinafter referred to as " the U.K. Act ").

This provision seeks to implement in relation to the Government the common law provision that a master is vicariously liable to third parties for torts committed by his servants and agents in the course of their employment or for torts committed by his servants and agents for the master's benefit and subsequently ratified by the master.

Both in relation to an employee of the Government and an agent of the Government, the expression " in the course of his employment " has been used. There is no difference between " course of his employment " and " scope of his authority ". " Scope of employment ", " course of employment ", " scope of authority " and " scope of service " mean practically the same thing. As stated in Winfield on Tort (Seventh Edition), p. 741, " course of employment seems to have supplanted scope of authority ". These expressions are the formulae which are employed to indicate the outward limits of responsibility of the employer for the torts of his servants or agents. As Fleming states in his " Law of Torts ", 2nd. Ed., at p. 333.

'That phrase (course of employment) like its variants " scope " or " sphere of employment ", is the formula which is employed to indicate the outward limits of responsibility for the unauthorised wrong doing of a servant, and represents the judicial compromise between the " social necessity " of making a master answerable for injury occasioned by servants entrusted with the power of acting in his business and the feeling that it would be unjust, and indeed undesirable to make him responsible for every act which ths servant chooses to do.'

The proviso to section 2(1) (*a*) of the U.K. Act has been omitted for the reasons given in paragraph 19 of the Report.

Sub-clause (*b*) implements paragraph 66. I(iii) of th Report read with Appendix VI.B thereto. Compare i

this conncetion section 40(2) (*d*) of the U.K. Act. See in this connection Clerk and Lindsell on Torts (Eleventh Edition), p. 137. The proviso to item (iii) of sub-clause (*b*) is, however, new because it is felt that it will not be fair and proper to make the Government liable under this item if there is an express stipulation in the contract between the Government and the independent contractor that reasonable care in the doing of the act shall be taken by the contractor and not by the Government and the independent contractor shall, and the Government shall not, be liable for any personal injury or any damage to property caused in the doing of the act by the failure on the part of the independent contractor to take such care.

The recommendation of the Law Commission [*vide* paragraph 66. I(i) of the Report] that the Government shall be liable for torts committed by employees or agents of public corporations of Government companies, has not been accepted because Government corporations or companies are separate juridical persons and there is no reason why the Government should be liable for the torts committed by the employees and agents of such corporations or companies.

Clause 4.—This clause implements paragraph 66. I(v) of the Report read with Appendix VI.E thereto. See also paragraph 24 of the Report. This clause corresponds to section 2(1) (*c*) and section 40(4) of the U.K. Act. See in this connection Clerk and Lindsell on Torts (Eleventh Edition), Chapter 18, and Winfield on Torts (Seventh Edition), Chapter 12.

Clause 5.—This clause implements paragraph 66.I(vi) ofthe Report read with Appendix VI.E(4) thereto.

The recommendations of the Law Commission in paragrah 66.II(ii) to (v) have been criticised as being rather toowide. It would appear that the position would be the

same even if these recommendations were not implemented. Accordingly, these recommendations have not been included in any clause of the Bill. It has however, been provided by sub-clause (*n*) of clause 11 that the Government shall not be liable in respect of any personal injury or any damage to property caused by an act which, by its nature, is likely in the ordinary course of events to cause such injury or damage, if the doing of the act is authorised by any enactment for the time being in force. This implements paragraph 66.II(i) of the Report.

Clause 6.—This clause implements paragraph 66.I(ii) of the Report read with Appendix V.I.D. thereto and follows section 2(1) (*b*) of the U.K. Act and is based on Clerk and Lindsell on Torts (Eleventh Edition), pp. 390—395. A proviso, has, however, been added that in awarding compensation to an employee of the Government, the court shall take into account any amount payable under any other law [such as the Extraordinary Pension Rules, the Personal Injuries (Emergency Provisions) Act, 1962, the Personal Injuries (Compensation Insurance) Act, 1963, etc.] to such employee by way of compensation, disablement benefit, etc.

Recommendation of the Law Commission in paragraph 66.III of the Report has not been included in the Bill. The Law Commission without assigning any reason has simply recommended that a provision may be made on the lines of section 3 of the U.K. Act. In view of the special powers conferred on the Government by section 21 of the Patents and Designs Act, 1911 and section 20 of the Atomic Energy Act, 1962, in relation to patents, designs, etc., there is hardly any practical utility for such a provision. Even in regard to section 3 of the U.K. Act, Prof. Glanville L. Williams in his booklet on Crown Proceedings, p. 9, observes that there is little scope in the case of patents and designs, etc., for infrigement actions notionally given

by this clause, to operate. Implementation of this recommendation many introduce avoidable uncertainty and complications in the matter.

Clause 7.—This clause implements paragraph 66.II(vi) of the Report and is modelled on section 2(4) of the U.K. Act.

Clause 8.—This clause implements the observations at the end of paragraph 66.I of the Report.

Clause 9.—This clause implements paragraph 66.IV(i) of the Report and is modelled on section 4 of the U.K. Act.

Clause 10.—This clause implements paragraph 66.V(iv) (c) and is modelled on section 10 of the U.K. Act, but there is a difference. The members of the police forces also have been brought within the purview of this clause, the reason being that in principle, the case of a police constable is not distinguishable from that of a soldier, especially when the police force to which he belongs is maintained by the State. *Vide* Attorney General for New South Wales *vs.* Perpetual Trustee & Co. (1955), 1 All E.R. 846 (P.C.) at pp. 857-58. In the U.K. Act, the members of the police force have not been brought within the purview of section 10 of that Act mainly because the police forces there are maintained by the local authorities, the only exception being the Metropolition police which is under the Secretary of State for Home Affairs.

Clause 11.—This clause implements paragraph 66. V of the Report and saves the Government from liability in respect of a large number of acts detailed therein.

Clause 12.—This clause saves pending proceedings.

Clause 13.—This clause makes a consequential and necessary amendment in the Fatal Accidents Act, 1855.

FINANCIAL MEMORANDUM

The Bill seeks to define the liability of Government in tort. It is not possible to assess the financial liability which Government will incur on the bringing into operation of this Bill when enacted, as a result of the torts committed by the Government or its employees, agents and contractors. That will depend on various factors, such as the number of torts committed, the number of suits instituted against the Government and the number of decrees for compensation passed in those suits against the Government. As it is not posible to foresee and visualise any of these matters, no estimate of the expenditure involved out of the Consolidated Fund of India (in case of the liability of the Central Government) is possible.

S. L. SHAKDHER,

Secretary.